



3510-16-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Native American Tribal Insignia Database

ACTION: Notice of an extension of a currently approved information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on the renewal of a currently approved information collection: 0651-0048 (Native American Tribal Insignia Database).

DATES: Written comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments by any of the following methods:

- *E-mail:* InformationCollection@uspto.gov. Include "0651-0048 comment" in the subject line of the message.
- *Federal Rulemaking Portal:* <http://www.regulations.gov>.
- *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Catherine Cain, Attorney Advisor, Office of the Deputy Commissioner for Trademark Examination Policy, P.O. Box 1451, Alexandria, VA 22313-1451; by

telephone at 571-272-8946; or by e-mail to Catherine.Cain@uspto.gov. Additional information about this information collection is also available at <http://www.reginfo.gov> under "Information Collection Review."

SUPPLEMENTARY INFORMATION

I. Abstract

The Trademark Law Treaty Implementation Act of 1998 (Pub. L. 105-330, § 302, 112 Stat. 3071) required the United States Patent and Trademark Office (USPTO) to study issues surrounding the protection of the official insignia of federally and state-recognized Native American tribes under trademark law. The USPTO conducted the study and presented a report to the House and Senate Judiciary Committees on November 30, 1999. One of the recommendations made in the report was that the USPTO create and maintain an accurate and comprehensive database containing the official insignia of all federally and state-recognized Native American tribes. In accordance with this recommendation, the Senate Committee on Appropriations directed the USPTO to create this database. The USPTO has established a database to record the official insignia of federally and state-recognized Native American tribes. This database is available at the USPTO's Web site, as part of the Trademark Electronic Search System (TESS). This information collection includes the information needed by the USPTO to enter an official insignia for a federally or state-recognized Native American tribe into this database of such insignia.

The USPTO database of official tribal insignias provides evidence of what a federally or state-recognized Native American tribe considers to be its official insignia.

This information thereby assists trademark examining attorneys in their examination of applications for trademark registration by serving as a reference for determining the registrability of a mark that may falsely suggest a connection to the official insignia of a Native American tribe. The database, included within TESS¹, is available to the public, on the USPTO Web site, and includes an online help program for using the system.

More information about the program is available on the Web site at

<https://www.uspto.gov/trademark/laws-regulations/native-american-tribal-insignia>.

Tribes are not required to request that their official insignia be included in the database. The entry of an official insignia into the Trademark systems does not confer any rights to the tribe that submitted the insignia, and entry is not the legal equivalent of registering the insignia as a trademark under 15 U.S.C. 1051 *et seq.* The inclusion of an official tribal insignia in the database does not create any legal presumption of validity or priority, does not carry any of the benefits of federal trademark registration, and is not a determination as to whether a particular insignia would be refused registration as a trademark pursuant to 15 U.S.C. 1051 *et seq.*

Requests from federally recognized tribes to enter an official insignia into the database must be submitted in writing and include: (1) a depiction of the insignia, including the name of the tribe and the address for correspondence; (2) a copy of the tribal resolution adopting the insignia in question as the official insignia of the tribe; and (3) a statement, signed by an official with authority to bind the tribe, confirming that the

¹ Trademark Electronic Search System (TESS)
<http://tmsearch.uspto.gov/bin/gate.exe?f=tess&state=4801:whlqra.1.1>

insignia included with the request is identical to the official insignia adopted by the tribal resolution.

Requests from state-recognized tribes must also be in writing and include each of the three items described above that are submitted by federally recognized tribes.

Additionally, requests from state-recognized tribes must include either: (1) a document issued by a state official that evidences the state's determination that the entity is a Native American tribe; or (2) a citation to a state statute designating the entity as a Native American tribe.

The USPTO enters insignia that have been properly submitted by federally or state-recognized Native American tribes into the database and does not investigate whether the insignia is actually the official insignia of the tribe making the request.

II. Method of Collection

By email, mail, facsimile, or hand delivery to the USPTO.

III. Data

OMB Number: 0651-0048.

Form Number(s): None.

Type of Review: Extension of a currently approved information collection.

Affected Public: State, Local, and Tribal governments.

Estimated Number of Respondents: 5 respondents per year.

Estimated Time Per Response: 1 hour to complete a request to record an official insignia, including time to prepare the appropriate documents and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 5 hours.

Estimated Total Annual Respondent (Hourly) Cost Burden: \$332. The USPTO expects that the activity in this information collection will be prepared by the tribal counsel.

According to data from the Bureau of Labor Statistics' Occupational Employment Statistics program, the mean hourly earnings for local government (excluding schools and hospitals) lawyers (occupational code 23-1011²) is \$51.02. USPTO estimates a fully burdened rate of \$66.32 (salary plus 30% for estimated overhead and benefits).

IC #	Item	Estimated Time for Response (a)	Estimated Annual Responses (b)	Estimated Annual Burden Hours (a) x (b) / 60 = (c)	Rate (\$/hr) d	Total Costs (c) x (d) = (hourly cost burden)
1	Request to Record an Official Insignia of a Federally Recognized Tribe	1 hour	4	4	\$66.32	\$265.28
2	Request to Record an Official Insignia of a State-Recognized Tribe	1 hour	1	1	\$66.32	\$66.32
	Totals	5	5	---	\$332

Estimated Total Annual Non-hour Respondent Cost Burden: \$38.25. There are no capital start-up, maintenance, or recordkeeping costs associated with this information collection. There are also no filing fees for submitting a tribal insignia for recording. However, this information collection does have annual (non-hour) cost burden in the form of postage costs.

² https://www.bls.gov/oes/current/naics4_999300.htm#23-0000

IV. Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

USPTO invites public comments on:

- (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (b) Accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used;
- (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (d) Ways to minimize the burden of the collection of information on respondents, e.g., including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Kimberly Hardy,

Information Collections Officer

Office of the Chief Administrative Officer

United States Patent and Trademark Office

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